

This is my first Ethics Advisory since I succeeded Mike Wentink on his retirement in September 2001. For those of you who attended our Annual Ethics Training Program last fall, "Do You Wanna Be an Ethics Millionaire?," you were introduced to me at that time. For those of you who do not know me, let this Ethics Advisory be my introduction to you. I want to know what you think about the Ethics Advisories. I welcome your questions about the topics or any other ethics topic. I also welcome your suggestions for future topics. You can reach me by e-mail--I am on the Global Address list--or you can call me at 703-617-8003.

The topic for this Advisory is "2000 Conflict of Interest Prosecution Survey." Annually, the Office of Government Ethics (OGE) publishes its annual survey of prosecutions involving the conflict of interest statutes. It has just completed its survey for calendar year 2000. I believe these cases present valuable lessons to Government employees. They present real life situations where employees had to confront ethics issues, and to the employees' misfortunes they made the wrong choice. Hopefully, learning about their experiences will help us make the right choice. These cases are all a matter of public record, and in this Advisory I am paraphrasing information from public records. For this reason the employees' names and their official positions are real. One final comment before I go into the case summaries: several of the employees were high ranking officials. Employees sometimes develop the notion that the high ranking officials always seem to walk away and employees lower down in the organization get hammered. As you can see, that is not always the case.

Conflicts of Interest--18 USC 208

United States v. Douglas J. Blake--Mr. Blake was an Air Force employee who had business relationships with Champion Construction Company. They shared profits as business partners in a series of ongoing business ventures. At times, Mr. Blake used his Government office equipment and resources to advance some of their joint business interests.

Mr. Blake informed officials at Champion that his agency was planning to solicit bids to renovate office space where he worked and recommended to them that Champion bid on the project. Champion officials asked Mr. Blake whether there was any problem with Champion bidding on the project because of his relationship with Champion. Blake assured them there would no conflict because he would not participate in the bidding process or the selection of the contractor.

Mr. Blake, however, did participate in the contract process. He first recommended to the contracting agency that Champion should be given the opportunity to bid on the contract. He later provided advice to the Contracting Officer's Technical Representative that Champion should be selected to do the work. He then personally selected Champion for the award after being

delegated the responsibility to make the decision without ever disclosing to anyone at his agency that he knew he should not participate because of his relationship with Champion. After the contract was awarded he continued to participate personally and substantially in change orders and overseeing Champion's work on the contract.

Outcome: Guilty plea to one felony count. Mr. Blake was sentenced to one-year probation and a \$2000 fine. He resigned from his Government position during the investigation.

United States v. Francis DeGeorge--Mr. DeGeorge was Inspector General of the United States Department of Commerce. Litton/PRC was a company conducting business with Department of Commerce and one of its subagencies, the National Weather Service. It had a contract with the National Weather Service to update its automated system.

As Inspector General of the Department of Commerce, Mr. DeGeorge was responsible for oversight of Litton/PRC's contract and he participated personally and substantially in that contract by making recommendations and rendering advice. While still employed at Department of Commerce and participating personally and substantially on the Litton/PRC contract, Mr. DeGeorge negotiated with the company for prospective employment.

Outcome: Guilty plea to a misdemeanor count of violating the conflict of interest statute for participating personally and substantially as a Government employee in a particular matter in which an organization with whom he was negotiating for prospective employment had a financial interest. Mr. DeGeorge was sentenced to one-year probation.

United States v. Michael P. Filchok--Mr. Filchok was employed as a loan officer by the Export-Import Bank of the United States (Ex-Im Bank), a wholly owned government corporation and independent agency of the United States. He was responsible for reviewing loan applications and presenting his financial analysis to his superiors. Based on his recommendations and analysis, Ex-Im Bank would decide whether to make a loan.

First National Bank of New England (First National Bank) often requested the services of the Ex-Im Bank. Mr. Filchok had frequent, almost daily, contact with First National Bank regarding various loan guarantees sought by the bank. While employed at the Ex-Im Bank, Mr. Filchok sent his resume to First National Bank. He received an offer of employment, which he eventually declined. While negotiating for employment with First National Bank. Mr. Filchok wrote two memoranda recommending approval of guarantees requested by First National Bank.

Outcome: Mr. Filchuck was prosecuted for participating personally and substantially as a Government employee in a particular matter in which an organization with whom he was negotiating for employment had a financial interest. He entered into a civil settlement agreement under which he paid the Government \$5000 and the Government released him from its claims.

United States v. Jean Kennedy Smith--Ms. Smith was the United States Ambassador to Ireland. While serving as Ambassador, she sent a letter to the Prime Minister of Ireland on State Department letterhead requesting a \$1,000,000 donation to help underwrite the costs of the Irish Festival to be sponsored and held at the Kennedy Center. At that time, Ms. Smith was also serving on the Board of Trustees of the Kennedy Center, a not-for-profit cultural and charitable organization. Ms. Smith was aware of the prohibitions against fundraising. During her Senate confirmation hearings she wrote a letter to Department of State legal and ethics officials that she would not personally and substantially participate in any solicitation of funds involving the Kennedy Center. She asserted she had approval to send the letter in question. There was no allegation that she gained personally in the matter. She was prosecuted for participating personally and substantially in a matter as a Government employee in a particular matter in which she was serving as an officer, director, or trustee of an organization that had a financial interest in the matter.

Outcome: Ms. Smith entered into a civil settlement agreement. She paid the Government \$5000 and the Government released her from its claims.

United States v. Donald Rappaport--Mr. Rappaport served as Chief Financial Officer and Chief Information Officer of the Department of Education. His wife owned 600 shares of Compaq stock that she inherited from her mother. During this period, Mr. Rappaport was involved in issues concerning Compaq computers. He was prosecuted for participating personally and substantially in a particular matter in which he or his spouse had a financial interest.

Outcome: Mr. Rappaport entered into a civil settlement agreement. He paid the Government \$20,000 and the Government released him from its claims.

United States v. Glenn R. Hodges--Dr. Hodges was Chief of Staff at the VA Medical Center in Kansas City, Missouri. During the same time he was employed as a physician by the University of Kansas Medical Center in Kansas City, Kansas. In his official capacity he approved a contract for cardiopath services to the VA Medical Center by the University of Kansas Medical Center.

Outcome: Dr. Hodges pled guilty to a misdemeanor count of taking official action in a matter affecting his personal financial interest. He was sentenced to a fine of \$250 and a special assessment of \$25.

United States v. Gilford Moss--Mr. Moss was an IRS Revenue/Settlement Officer. He was assigned to a collection matter which gave him access to inside information concerning a proposed stock exchange. After his role in the case was substantially complete, he purchased approximately \$2000 in the stock subject to the proposed exchange based in part on the information he learned during the course of his duties as revenue officer. After he purchased the stock, on several occasions, he had minor contact on the case with the parties before the IRS. He eventually went to his supervisor and disclosed his interest in the stock and was removed from further participation in the case. Mr. Moss also lost money on the stock transaction.

Outcome: Mr. Moss was prosecuted for participating personally and substantially as a Government employee in a particular matter in which he had a financial interest. He was placed on a pre-trial diversion for six months on the condition that he resign from the IRS and perform 120 hours of community service.

Post Employment Conflicts of Interest--18 USC 207

United States v. Mark A. Boster--Mr. Boster served as the Deputy Assistant Attorney General of the Information Resources Management Office of the Department of Justice. This is an Executive Service position. His job involved managing computer systems, and his office was responsible for maintaining, assessing, designing, and procuring computer and telecommunications systems. Mr. Boster left Government service and went to work for SAIC. About three months after he left Government service he telephoned the Government official acting in his former position and told that official he knew the agency was considering not using SAIC on a new contract. Mr. Boster stated that such action might require a payment to SAIC, which could, in turn, trigger the Anti-Deficiency Act because budgeted funds would have been exceeded.

Outcome: The Government alleged Mr. Boster's conduct violated the one-year restriction prohibiting "senior employees" from communicating with their former agency on behalf of another person or entity with the intent to influence an agency action--the one-year "cooling off" period. Mr. Boster entered into a civil settlement in which he paid the Government \$30,000 and the Government released Boster from its claims.

United States v. Timothy A. Anderson--Mr. Anderson was employed as a chemist by the Food and Drug Administration in the Office of Generic Drugs

(OGD). He performed reviews of Abbreviated New Drug Applications (ANDAs) submitted by pharmaceutical companies seeking to gain approval to manufacture and market generic versions of innovator drugs. Shortly before leaving Government employment he completed the first level chemistry review of Taro Pharmaceuticals, Inc. ANDA #74-444, an alleged generic equivalent of Monistat-7. Upon leaving Government service he went to work for Taro. On numerous occasions he contacted OGD officials in an effort to obtain approval of Taro's ANDA #74-444, which was still pending before OGD. He inquired about the status of the application and aggressively sought to speed up the approval process. He used his acquaintance with supervisory-level OGD officials in an attempt to obtain special treatment for Taro's product, which ultimately was approved.

Outcome: Mr. Anderson was charged with violating the lifetime prohibition against communicating or appearing before the Government on behalf of another in connection with any matter in which the individual participated personally and substantially as a Government employee. Mr. Anderson entered into a civil settlement under which he paid the Government \$15,000 and the Government released him from its claims.

Government Employee Representation--18 USC 203

United States v. Annette Johnson--Ms. Johnson was a clerical employee for the Immigration and Naturalization Service (INS) who took money in exchange for assisting in processing INS naturalization documents.

Outcome: Ms. Johnson pled guilty to a misdemeanor charge for receiving compensation for representational services rendered in a particular matter before an agency of the Government. She was sentenced to two-years probation and a \$1000 fine.

Robert H. Garfield
Associate Counsel for Ethics